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\*E-FILED 5/19/08\*

6 Attorneys for Defendant CAL-WESTERN RECONVEYANCE CORPORATION.

7

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION**

10

11 RUSSELL DON HOLTZ,

12 Plaintiff,

13 v.

14 BANK OF AMERICA, NATIONAL  
15 ASSOCIATION, a national banking  
association; CAL-WESTERN  
16 RECONVEYANCE CORPORATION, a  
California corporation; PRLAP, INC., a  
17 North Carolina corporation; and DOES 1  
through 20, inclusive.,

18 Defendants.

Case No. C08 02166

Assigned to Magistrate Judge Richard Seeborg

19 **STIPULATION FOR NON-  
MONETARY JUDGMENT AS TO  
DEFENDANT CAL-WESTERN  
RECONVEYANCE CORPORATION  
AND ORDER THEREON**

Complaint Filed: April 25, 2008  
Trial Date: None set

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Plaintiff, RUSSELL DON HOLTZ, ("PLAINTIFF"), by and through his attorneys of record, CONSUMER LAW CENTER, INC., and Defendant CAL-WESTERN RECONVEYANCE CORPORATION ("CWR"), by and through its attorneys of record, Pite Duncan, LLP, enter into this Stipulation and request that the Court issue an Order embodying its terms and provisions.

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**RECITALS**

22

A. PLAINTIFF filed a Complaint in the above-captioned action on April 25, 2008. The Complaint seeks damages and declaratory relief as a result of alleged violations of the Truth in Lending Act, 15 U.S.C. § 1601 *et. seq.* and Federal Reserve Board Regulation Z,

1 12 C.F.R. § 226, promulgated pursuant thereto.

2 B. PLAINTIFF asserts that he was not provided with notice of his statutory right  
3 to rescind under federal law after executing a deed of trust dated November 1, 2004 that  
4 encumbers the property located at 905 Suiter Street, Hollister, California.

5 C. On February 14, 2008, CWR recorded a Notice of Default in the Official  
6 Records of the County of San Benito as Instrument Number 2008-0001408. The Notice of  
7 Default indicated that a default of \$6,426.34 existed as of February 13, 2008 under the  
8 subject deed of trust.

9 **STIPULATION**

10 1. PLAINTIFF acknowledges and stipulates that CWR has been named as a  
11 defendant in this litigation solely in its capacity as a trustee under the deed of trust and that  
12 it has not been named as a defendant due to any acts or omissions on its part in the  
13 performance of its duties as trustee.

14 2. CWR has not been involved in any way with the property that is the subject of  
15 this lawsuit, except in its capacity as the trustee under the deed of trust which encumbers the  
16 property.

17 3. CWR agrees to be bound by whatever order or judgment is issued by the Court  
18 regarding the deed of trust and shall not be subject to any monetary awards for damages,  
19 attorney's fees or costs pursuant to *Civil Code* § 2924l(d). CWR will not be required to  
20 respond to any of the pleadings in this action, and will not be required to appear at any  
21 hearings of the trial of this matter.

22 4. The filing of this stipulation is not intended to and does not prejudice the  
23 rights of any trustor, beneficiary, or assignee under the deed of trust, and shall not constitute  
24 a waiver of any other person or entity's rights or obligations under the deed of trust.

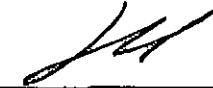
25 5. This Stipulation shall inure to the benefit of the parties and their successors  
26 and/or assigns.

27 6. The parties to this Stipulation agree and request that the Court issue an Order  
28 consistent with the terms of this Stipulation.

1 IT IS SO STIPULATED.  
2

3 Dated: 4-7-08

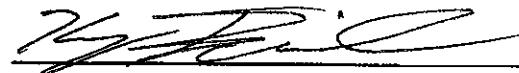
CONSUMER LAW CENTER, INC.



6 FRED W. SCHWINN  
7 Attorneys for Plaintiff RUSSELL DON HOLTZ  
8  
9

10 Dated: 5/8/08

PITE DUNCAN, LLP



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13 BRUCE J. QUILLIGAN  
14 KERRY W. FRANICH  
15 Attorneys for Defendant CAL-WESTERN  
16 RECONVEYANCE CORPORATION.  
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**ORDER**

19 The Court, having considered the Stipulation of the parties, and other good cause  
20 appearing, the Stipulation is approved and adopted as the Order of the Court.  
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Dated: May 19, 2008



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23 Magistrate Judge Richard Seeborg  
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<b>ATTORNEY OR PARTY WITHOUT ATTORNEY</b> (Name and Address) Bruce J. Quilligan (SBN 77830) Kerry W. Franich (SBN 245857) PITE DUNCAN, LLP 1820 E. First Street, Suite 420 Santa Ana, CA 92705 Email : <a href="mailto:Bquilligan@piteduncan.com">Bquilligan@piteduncan.com</a> ; <a href="mailto:Kfranich@piteduncan.com">Kfranich@piteduncan.com</a> <b>ATTORNEY FOR:</b> (Name) Defendant CAL-WESTERN RECONVEYANCE CORP.		<b>TELEPHONE NO.</b> (714) 285-2664	<b>FOR COURT USE ONLY</b>
<b>U. S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA</b> <b>STREET ADDRESS:</b> 280 S. First Street <b>MAILING ADDRESS:</b> <b>CITY &amp; ZIP CODE:</b> San Jose, California 95113 <b>BRANCH:</b> San Jose Division			
<b>PLAINTIFF:</b> RUSSELL DON HOLTZ			
<b>DEFENDANT:</b> BANK OF AMERICA, et al.			
<b>DECLARATION OF SERVICE</b> [CCP 1013, 2015.5 and 1011] [CRC 2003 and 2006(d)]		<b>CASE NUMBER:</b> C 08 02166	

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 1820 E. First Street, Suite 420, Santa Ana, California 92705. On May 16, 2008, I served the following document(s) or true copies thereof, with all exhibits, described as: **STIPULATION FOR NON-MONETARY JUDGMENT AS TO DEFENDANT CAL-WESTERN RECONVEYANCE CORPORATION**, on the interested parties in this action as follows:

**SEE COURT'S SERVICE LIST AS OF THE DATE OF THIS DECLARATION**

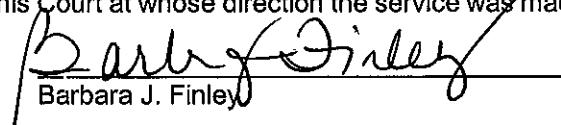
[APPLICABLE PARAGRAPH(S) CHECKED:]

- BY ELECTRONIC TRANSFER:** I caused the above-entitled document(s) to be electronically filed and served on the interested parties via CM/ECF e-service at <http://www.cand.uscourts.gov/> on May 16, 2008. A copy transmission receipt will be maintained with the original document(s) in our office.
- BY MAIL:** I caused such envelope with first-class postage fully prepaid thereon to be placed in the United States mail at Santa Ana, California.
- BY MAIL IN THE ORDINARY COURSE OF BUSINESS:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U. S. Postal Service on that same day with first-class postage thereon fully prepaid at Santa Ana, CA, in the ordinary course of business.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

- BY PERSONAL SERVICE:** I caused the foregoing document to be personally served by hand to the offices of the addressee.
- BY FACSIMILE TRANSMISSION:** I caused the foregoing document to be sent via facsimile transmission to the facsimile number(s) listed with each party.
- STATE:** I certify/declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- FEDERAL:** I certify/declare/state under penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed: May 16, 2008



Barbara J. Finley